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U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of Airport Safety and
Standards

DEPT OF TRANSPORTATION
WASHINGTON

00 JAN 17 AM 11:45

800 Independence Ave., SW.
Washington, DC 20591

MAY 17 2000

Mr. James P. Huey, President
Board of Commissioners
Orleans Levee District
Administration Building, Suite 202
6001 Stars and Stripes Boulevard
New Orleans, LA 70126-8006

FAA-2003-14246-3

Dear Mr. Huey:

The Federal Aviation Administration (FAA) has completed its review of the New Orleans Lakefront Airport (NEW) preliminary application for exemption, dated March 2, 2000, under the Airport Privatization Pilot Program. The application as filed does not fully address the procedural requirements in the FAA's *Notice of Airport Privatization Pilot Program: Application Procedures*, 62 *Federal Register* 48693 (September 16, 1997, as amended November 26, 1997). Accordingly, we are not making a determination at this time whether the NEW preliminary application is sufficient to qualify for a March 2 filing date and acceptance for review.

The procedural requirements for participation in the program are described in 62 FR 48706, "Contents of the Preliminary Application." Material filed with the New Orleans Lakefront preliminary application does not provide information sufficient to satisfy these requirements. Specifically, the application did not provide the following information:

- a. According to our records, at least a portion of the airport consists of Federal Surplus property. Please provide a copy of the Federal Surplus property deed and if available an exhibit A map or Airport Layout Plan outlining the Federal Surplus property.
- b. The preliminary application references Resolution Number 5-021600 as giving the Levee Board President authority to take all action required to privatize the operation of the airport. A review of Resolution Number 5-021600 dated February 16, 2000, only authorizes the Board President to hire a consultant to manage the selection of a private operator. Please provide a

resolution or other legal authority authorizing the President to submit an application for participation in the airport privatization pilot program.

c. Attachment 5 of the application, entitled, "Description of Property and History of Acquisition of Property." includes a legal citation, Section 336 that appears to prohibit Levee Board from selling, leasing or disposing of land dedicated for public use that includes aviation as a use. Please provide a legal opinion or reference that gives the Levee Board the legal authority to lease or sell the airport.

d. In Attachment 6, entitled, "Financial Statements", the combining balance sheets for the periods ending June 30, 1999 and 1998, list accounts such as Deferred revenues and Due to other funds, indicate a zero cash on hand, and current liabilities well in excess of current assets. Please provide more information regarding these accounts, including an explanation as to how bills are paid in the absence of any cash, how the airport continues to operate with current liabilities so much greater than current assets, and an explanation as to how the balance sheet accounts of Deferred revenues and Due to other funds are related to the Airport.

Finally, Resolution Number 5-021600 dated February 16, 2000 referred to the FAA endorsing and recommending consultants. As a matter of policy, the FAA does not recommend or endorse consulting firms. We would appreciate your striking such references from all future correspondence. If you have any questions, please contact Kevin Willis at 202 267-8741.

Sincerely,



David L. Bennett
Director, Office of Airport Safety and
Standards

cc: Steve Steckler, President, IMG

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Of Counsel:
M. Elizabeth Bowman
Christy R. Bergeron
Philip A. Costa

May 19, 2000

VIA FACSIMILE AND U.S. MAIL
(202) 267-5032

Mr. Kevin Willis
U.S. Department of Transportation
Office of Airport Safety and Standards
800 Independence Avenue, S.W.
Washington, D.C. 20591

Re: New Orleans Lakefront Airport
Preliminary Application -
Airport Privatization Pilot Program

Dear Mr. Willis:

This letter comes to you in response to a letter forwarded to Mr. James P. Huey, President of the Board of Commissioners of the Orleans Levee District issued by Mr. David L. Bennett, Director, Office of Airport and Safety Standards regarding the preliminary application for exemption under the Airport Privatization Pilot Program filed by the Board of Commissioners of the Orleans Levee District. This office has the pleasure of representing the Board in connection with the proposed privatization of the New Orleans Lakefront Airport. As I believe you are aware, the Board also has engaged the services of Infrastructure Management Group, Inc. of Bethesda, Maryland to assist it with the proposed privatization of the New Orleans Lakefront Airport.

Steve Steckler of IMG and I placed a call to you this afternoon to discuss the information requested in Mr. Bennett's letter of May 17th. Since we were unable to speak with you, I wanted to write to let you know exactly what we have done and are doing to provide the requested information to satisfy the procedural requirements for the preliminary application filed to qualify for a March 2nd filing date and acceptance for review by the FAA. In connection with the requested information, I have the following to report to you at this time:

1. **Item A.** The Aviation Director of the New Orleans Lakefront Airport, Randolph Taylor, will be forwarding directly to you on Monday copies of documents on file relating to Federal Surplus Property at the NOLA, along with a copy of an Exhibit A Map or Airport Layout Plan outlining the Federal Surplus Property. Mr. Taylor

will be available at your convenience to discuss the documentation that he will be forwarding to you as well as any additional information that the FAA will need to process the preliminary application. Mr. Taylor may be reached at (504) 243-4012.

2. **Item B.** Since the Resolution forwarded with the application has not been deemed sufficient as authorization for the President of the Board to submit the application for participation in the Airport Privatization Pilot Program, my client has two options to satisfy this requirement: first, a motion authorizing and ratifying the action taken by the Board's President can be submitted for approval at the Board's next regularly scheduled monthly meeting, which is set to be held on June 21, 2000; or, a special meeting of the Board can be called for consideration of such a resolution by the Board. My client earnestly desires to have the preliminary application submitted qualify for a March 2nd filing date and acceptance for review; accordingly, please advise me if it will be necessary to call a special meeting to satisfy the March 2nd filing date; if not, the matter will be placed on the agenda for approval at the meeting scheduled for June 21st.
3. **Item C.** You will find attached a copy of an Opinion Letter dated July 23, 1998 indicating that the Board has the authority to lease the Airport without limitation under such terms and conditions and by such methods as the Board may deem proper pursuant to its plenary power to dispose of property under the express provisions of La.Rev.Stat. 38:336. I am also enclosing a copy of the Louisiana Supreme Court's decision in Arnold, et al v. Board of Commissioners of the Orleans Levee District, in which the Court recognized the plenary authority of the Board of Commissioners to dispose of reclaimed lake property, which "reclaimed property" specifically includes the New Orleans Lakefront Airport. Further, we have been in contact with counsel for the Louisiana Department of Transportation, Aviation Department, and he is in agreement with the opinion expressed in the attached letter. If your counsel needs any additional legal authority on this question, please have him contact me at his convenience.
4. **Item D.** The financial information and explanation requested in Item D is being compiled and prepared by the Director of the Finance Department of the Orleans Levee District, and will be forwarded directly to you early next week.

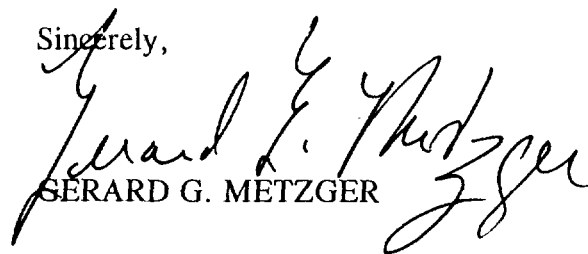
In conclusion, please excuse the use of the words "endorsing and recommending" that was contained in Resolution No. 5-021600 dated February 16, 2000. Thank you for calling to our attention the policy of the FAA to not recommend or endorse consulting firms. In fact, the FAA

Kevin Willis
U.S. Department of Transportation
Office of Airport Safety and Standards
May 19, 2000
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in this instance only made a referral of a number of consulting firms who have handled privatization projects, which was greatly appreciated. Accordingly, no reference to "endorsing and recommending" consultants will be made in any future correspondence, as requested in Mr. Bennett's letter of May 17, 2000.

With best personal regards, I am

Sincerely,



GERARD G. METZGER

GGM/tt
Enclosures

cc: David L. Bennett, Director, Office of Airport Safety and Standards
Steve Steckler, President, IMG, Inc.
Hon. James P. Huey, President, OLD
Hon. Gen. James E. Livingston, Commissioner, OLD
Hon. Robert E. Smith-Lupo, Commissioner, OLD
Hon. Marlin N. Gusman, Commissioner, OLD
Hon. Patricia W. Harris, Commissioner, OLD
Max L. Hearn, Executive Director, OLD
Randolph Taylor, Aviation Director, OLD
Gary G. Benoit, Esq., Senior Legal Counsel, OLD

The Board of Commissioners

OF THE

Orleans Levee District

SUITE 202 — ADMINISTRATION BUILDING
NEW ORLEANS LAKEFRONT AIRPORT

New Orleans, La.

70126

TEL: 504-243-4000

PROTECTING YOU
AND YOUR FAMILY

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SUBJECT TO ATTORNEY-CLIENT
PRIVILEGE**



July 23, 1998

BY HAND DELIVERY

Hon. James P. Huey, President
Board of Commissioners of the
Orleans Levee District
Suite 202 - Administration Bldg.
New Orleans Lakefront Airport
New Orleans, Louisiana 70126

RE: LEASE OF LAKEFRONT AIRPORT

Dear President Huey:

This will respond to your request for a legal opinion as to the authority of the Board of Commissioners of the Orleans Levee District ("OLD") to lease the land and facilities of the New Orleans Lakefront Airport. This opinion will be limited to this particular issue and will not address other issues related to the lease of the Lakefront Airport, which are discussed in the concluding paragraph of this letter.

Large portions of the bed and bottoms of Lake Pontchartrain situated in Orleans Parish were reclaimed by the OLD. Some of the reclaimed land was sold to individuals and title to the remaining reclaimed land was vested in the OLD. Lakefront Airport was constructed on lands reclaimed by the OLD pursuant to authority granted the OLD by the Louisiana Constitution of 1921, Article XVI, § 7, as amended in 1922 and 1928, which granted the OLD broad powers to develop the area. Pursuant to the Louisiana Constitution of 1974, Art. 14 § 16(A)(12), these constitutional provisions were transferred to the Louisiana Revised Statutes dealing with the Orleans Levee Board and are now found in Title 38 of the Louisiana Revised Statutes.

Honorable President James P. Huey
The Board of Commissioners of
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The grant of authority to the OLD by the 1921 Louisiana Constitution gave it "the full and exclusive right, jurisdiction, power, and authority" to reclaim within an area extending from the western boundary of Orleans Parish to a point approximately one-half mile East of Paris Road (the "lower limit of the project). The area was divided into five zones with Zone 5 constituting the area from the Industrial Canal to the lower limits of the project. The work was to be completed zone by zone from West to East with no work commenced in Zone 5 until three Zones were completed, except that work connected with the construction and creation of aviation fields could be commenced at any time.

Specifically, the Lakefront Airport was constructed by the OLD pursuant to the authority granted under Paragraph (c) of Act 292 of 1928, duly approved by the electorate, amending Article XVI, Section 7(b) of the Louisiana Constitution of 1921. By the grant to the OLD of the "rights, jurisdiction, power and authority to plan, execute and maintain all the works and all the phases of the project and improvements undertaken hereunder," including aviation fields, the State resorted to the use of the OLD to effect the improvements contemplated. In respect to these public works, the OLD was alone charged with the responsibility of not only their planing and construction, but their maintenance as well. This responsibility involved not only the dedication to public use of the required land, the construction of buildings, with necessary related adjuncts, but a fitting and proper maintenance, the latter necessarily involving the duty of proper operation of these improvements in all of their phases. The Lakefront Airport (formerly known as the Orleans Airport) was to, and did, come into being through the agency of the Orleans Levee Board and was dedicated in 1934, prior to completion of three zones on the Lakefront. The constitutional provisions vesting the OLD with the right, jurisdiction, power and authority to construct the airport makes it manifest that the origin, growth, development and the continued existence of the airport, as an agency of public service, rests exclusively with the OLD. The Lakefront Airport with its lands, buildings, services and other adjuncts were to be, and are, owned and controlled and within the OLD's general supervision, as are levees, drainage and other like projects. Jurisich v. Board of Commissioners of the Orleans Levee District, 8 So.2d 554 (La.App. 4th Cir. 1942).

The Louisiana Supreme Court has recognized the OLD as owner of the areas reclaimed from Lake Pontchartrain with the right to alienate (sell) and lease the areas reclaimed:

"We conclude that the intent of these provisions was to provide the board with administrative authority over an area large enough to carry out its ambitious development plans without the need for periodic constitutional amendments. This purpose has been met; no further changes in the board's authority have been necessary. In order to

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finance the project, the board was given title to those areas reclaimed, and the board was given the power to alienate what otherwise would have been a public and inalienable thing, namely, the shore, bed and bottom within such reclaimed areas..."

State Ex Re: Guste v. Board of Commissioners of the Orleans Levee District,
456 So.2d 605, 610 (La. 1984).

Generally, the State, its agencies and its political subdivisions, including levee districts, must follow public advertisement and competitive bidding procedures when selling or leasing property, unless a statute expressly exempts them from doing so. La.R.S. 41:1211, et seq. The Louisiana Public Lease Law, found at Louisiana Revised Statute 41:1211, et seq., specifically provides that levee districts are lessors within the meaning of the public lease law, which requires all lessors to lease land that they either own or possess to private individuals for a legitimate purpose, pursuant to public advertisement and bids in accordance with the Louisiana Public Lease Law. A question then arises whether the OLD may lease the Lakefront Airport without complying with the advertisement and bid requirements of the Louisiana Public Lease Law.

Louisiana courts have specifically recognized the authority of the Board of Commissioners of the Orleans Levee District to lease reclaimed lake property on terms and conditions which it deems best, without complying with the mandates of the Louisiana Public Lease Law. The Supreme Court of Louisiana put its imprimatur on the authority of the Board of Commissioners to lease reclaimed lake property, without compliance with the provisions of the Louisiana Public Lease Law, in **Arnold, et al. v. Board of Commissioners of the Orleans Levee District**, 366 So.2d 1321 (La. 1978). In **Arnold**, an objection was posed to a lease negotiated by the OLD within the area of reclamation for property to be used for the construction of a museum and library. Plaintiffs contended that the negotiated lease was in derogation of the Public Lease Law, La.R.S. 41:1211, et seq., to which they alleged the OLD was subject. The Court reviewed the constitutional and statutory provisions relating to the authority of the OLD in the area of reclamation and, in rejecting plaintiffs' argument, held:

"From this review of the jurisprudence, it appears to us that the broad grant of authority to the Levee Board in disposing of property reclaimed from the lake bottom operates as an exemption to the general law requiring public bids before state lands can be leased. The phrase 'under such terms and conditions and by such methods as said Board may deem proper . . .' indicates a plenary grant of authority to the Board to dispose of the property within the lakefront area in any

Honorable President James P. Huey
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manner which it deems appropriate under the circumstances, which includes a negotiated lease. To hold otherwise is to engraft onto the special powers granted the Board a proviso that they be exercised in accordance with the provisions of any general statute dealing with related subject matter which the legislature might subsequently pass. Such a construction is warranted neither by the language in question nor the history of the development of the New Orleans Lakefront."

Arnold, 336 So.2d at 1326.

Thus, Title 38 governing levee districts and the jurisprudence interpreting its provisions authorize the Board of Commissioners to use its plenary power to grant a lease of reclaimed lake property without compliance with the Louisiana Public Lease Law. **La.R.S. 38:336. Arnold, 336 So.2d at 1326.** Neither does this authority appear to be limited by the statutory provisions of either the Louisiana Uniform Airport Law or Airport Authorities Law. **La.R.S. 2:131, et seq. La.R.S. 2:601, et seq.** Both of these special statutes deal with airports and leases by them; further, these Acts provide restrictions on the method of leasing airport property, and the Uniform Airports Act even prohibits a "political subdivision" from leasing an entire airport. **La.R.S. 2:135.1 (f).** Louisiana Revised Statute 2:131(A) provides in part: "'Political subdivision(s)" as used in this Part means any parish of this state as well as any county of another adjoining or adjacent state which is authorized by the law of that state to engage in a joint endeavor for the creation and operation of an airport district with a political subdivision of this state. Louisiana Revised Statute 2:601(1) states that a "Subdivision" means any parish, incorporated city, town or village of this state. Although the OLD is statutorily defined as a political subdivision of the State of Louisiana in **La.R.S. 38:281(6)**, these Acts appear not to be applicable to the OLD, since the OLD does not fit the specific definition of a political subdivision as defined in the Uniform Airport Law or the Airport Authorities Law. Furthermore, since the Lakefront Airport was not established pursuant to the Uniform Airport Law and is not an "authority" under the Airport Authorities Law, but rather was originally established pursuant to constitutional provisions, these Acts do not appear to apply in the event of a lease of Lakefront Airport by the OLD. Accordingly, the restrictions of these Acts should not impair the Board's authority to enter into a lease of the Lakefront Airport. **La.R.S. 38:336(A).**

Even if the special airport legislation were applicable, the grant of authority to the OLD cited above in Title 38 should apply as an exception to the limitations and prohibitions of these Acts. As the Court noted in **Hall v. Rosteet, 169 So.2d 903 (La. 1964)**, when reviewing the Uniform Airports Act in relation to special laws concerning the Calcasieu Parish Police Jury, the Louisiana Public Lease Law is only applicable to leases of state property in the absence of an

Honorable President James P. Huey
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express provision in special law that such leases may be negotiated without advertisement and competitive bidding. The provisions of La.R.S. 38:336 establish such an exemption from the requirements of the Louisiana Public Lease Law. Arnold, 366 So.2d at 1326. Therefore, the referenced provisions of Title 38 constitute an exception to the 25 year lease limitation and prohibition against a political subdivision leasing an entire airport of the Uniform Airports Act and the limitations contained in the Airport Authorities Law. La.R.S. 2:131, et seq. La.R.S. 2:601, et seq.

Based on the foregoing authorities, it is our opinion that the Board of Commissioners of the Orleans Levee District has the authority under state law to lease Lakefront Airport without limitation under such terms and conditions and by such methods as the Board may deem proper pursuant to its plenary power to lease property under the express provisions of La.Rev.Stat.38:336(A).

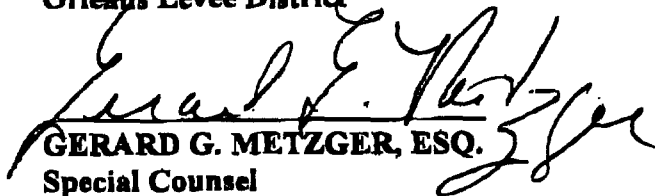
This opinion does not address other issues involved in a proposed lease of the Lakefront Airport, including but not limited to whether permission for such lease need be obtained from the Federal Aviation Administration, the effect of a lease of the airport on federal grants for the airport, whether a lease of the airport is permissible under 49 U.S.C. § 47101, et seq., the status of existing leases in the event of a lease of the entire airport, the limitations on disposition of waterbottoms and "public use" doctrine in Louisiana Constitution, Article 9, Section 3. These issues will be addressed in subsequent opinions to be issued within the next two weeks by counsel for the Board of Commissioners of the Orleans Levee District.

Trusting the above responds to your request, we are

Yours very truly,



EMILE W. SCHNEIDER, ESQ.
Special Counsel
Orleans Levee District



GERARD G. METZGER, ESQ.
Special Counsel
Orleans Levee District

**Honorable President James P. Huey
The Board of Commissioners of
the Orleans Levee District
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GGM/scd

**cc: Honorable Commissioner Kathleen Cain, OSF
Honorable Commissioner Ellen Hazeur-Distance
Honorable Commissioner Marlin N. Gusman
Honorable Commissioner Patricia W. Harris
Honorable Commissioner Victor A. Landry
Honorable Commissioner James E. Livingston
Honorable Commissioner Robert E. Lupo**

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ARNOLD v. BD. OF LEVEE COM'RS, ETC.

La. 1321

Cite as, La., 346 So.2d 1321

We do not think that the legislature intended to delegate to the courts the task of formulating rules for the regulation and licensing of financially responsible habitual offenders after completion of their revocation periods. Nor, in our opinion, did the lawmakers intend for the relicensing decision to be made without reference to any standard other than each judge's notion of whether there is "good cause" to terminate revocation at the end of five years. We cannot attribute to the legislature the intention to commit such a vast area of legislative responsibility to the judiciary.

Accordingly, we conclude that an interpretation of the statute adhering strictly to the "niceties of grammar rules" leads to an absurd or unreasonable result making such a construction of the legislation dubious. Following the Civil Code rules for the construction of laws, therefore, we will seek the true meaning of the law by examining the context of the dubious wording and by considering the reason and spirit of the statute or the cause which induced its enactment.

From a reading of the statutory provisions as a whole it is evident that the law-makers intended for an otherwise qualified financially responsible habitual offender to have the right to obtain a new license after the lapse of his five-year revocation period. The discretion granted courts to determine when good cause exists for a conditional restoration of driving privileges is restricted and may be exercised only during the revocation term. The statute requires the courts to play their customary role of providing limited relief in hardship cases, see, La.R.S. 32:415.1,* and does not commit to them a carte blanche for the drafting of a post-revocation policy for the issuance of drivers' licenses.

For the reasons assigned, the judgment of the court of appeal is reversed, and the case is remanded to the court of appeal for its further review to determine whether the district court acted within its discretion in

* See, La.C.C. art. 17: "Laws in *pari materia*, or upon the same subject matter, must be construed with a reference to each other; what is

finding that good cause exists for the limited restoration of Smith's driving privileges during his revocation period. All costs are assessed to the respondent.

REVERSED AND REMANDED.

SUMMERS, J., concurs.

DIXON, J., concurs with reasons.

DIXON, Justice (concurring).

I respectfully concur for the reason that the restoration by a court of the privilege of driving after a five year prohibition is not a judicial function, but a ministerial one.



Henry ARNOLD and John F. Robbert

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The BOARD OF LEVEE COMMISSIONERS OF the ORLEANS LEVEE DISTRICT, Guy LeMieux, the F. Edward Hebert Foundation and Ernest A. Carrere, Jr.

Nos. 62385, 62453.

Supreme Court of Louisiana.

Dec. 15, 1978.

Taxpayers brought suit to enjoin construction of a museum and library on property leased from a parish levee board. The Civil District Court, Parish of Orleans, maintained defendants' exception of no cause of action, and taxpayers appealed. The Court of Appeal, 327 So.2d 495, reversed, holding that a petition alleging that lease in question was conferred without compliance with Public Lease Law stated a cause of action. On remand, the Civil Dis-

clear in one statute may be called in aid to explain what is doubtful in another."

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trict Court, Parish of Orleans, Division "D", No. 590-805, S. Sanford Levy, J., entered judgment nullifying contract of lease and enjoined proposed construction. Defendants appealed, and the Court of Appeal, Stoulig, J., 359 So.2d 748, affirmed. On writ of certiorari, or review, the Supreme Court, Dixon, J., held that broad grant of authority to levee board in disposing of property reclaimed from lake bottom operated as an exemption to general law requiring public bids before state lands could be leased, and consequently the Court of Appeal committed error in holding lease in question invalid for failing to comply with requirements of Public Lease Law.

Judgment of the Court of Appeal reversed and case remanded for further proceedings.

1. Levees and Flood Control ⇐9

Granting a lease of lakefront property for construction of a public museum and library was not foreign to authority of parish levee board to develop lakefront. LSA-R.S. 38:1235.2.

2. Levees and Flood Control ⇐9

Broad grant of authority to parish levee board in disposing of property reclaimed from lake bottom operated as an exemption to Public Lease Law requiring public bids before state lands can be leased; phrase "under such terms and conditions and by such methods as said Board may deem proper" indicated a plenary grant of authority to board to dispose of property within lakefront area in any manner which it deemed appropriate under circumstances, which included a negotiated lease. LSA-R.S. 38:1235.2, 41:1211 et seq.

See publication Words and Phrases for other judicial constructions and definitions.

3. Levees and Flood Control ⇐9

Lease between foundation and parish levee board was not invalid for failure to comply with requirements of Public Lease Law. LSA-R.S. 38:1235.2, 41:1211 et seq.

4. Levees and Flood Control ⇐9

Lease to foundation of lakefront property belonging to parish levee board for construction of a museum and library was not invalid on alleged ground that its execution did not assist in defraying expenses of levee board's reclamation projects. LSA-R.S. 38:1235.2.

5. Levees and Flood Control ⇐9

Phrase "to assist in defraying costs and expenses thereof" in statute granting parish levee board broad powers for developing lakefront area referred to state's grant to board of its title in lakefront property and was a corollary to statute's first phrase "to enable the board to perform the work here-in provided for"; language in question was not a condition placed on board's activities in disposing of reclaimed land. LSA-R.S. 38:1235.2

See publication Words and Phrases for other judicial constructions and definitions.

6. Landlord and Tenant ⇐24(1)

Price for a lease must be serious and not out of proportion to the thing's value. LSA-C.C. art. 2464.

7. Levees and Flood Control ⇐9

Notwithstanding contention that annual payments of \$1 per acre were insufficient to support contract for lease of lakefront property belonging to parish levee board to foundation for construction of a museum and library, serious consideration was provided by obligations imposed on foundation by lease, which, in addition to nominal annual payment, obligated foundation to construct a building at a minimum cost of \$300,000, design and structure of which were subject to board's approval and ownership of which would eventually be granted to board with no compensation due foundation, and which further obligated foundation to maintain improvements during lease term and to pay insurance premiums on any policies covering improvements. LSA-C.C. art. 2464.

8. Injunction ⇐102

An injunction should not be issued to prevent commission of a crime, if only reason for preventing it is that it is a crime.

ARNOLD v. BD. OF LEVEE COM'RS, ETC.

La. 1323

Cite as, La., 366 So.2d 1321

9. Injunction — 102

When building, which was to be constructed on lakefront property leased to foundation by parish levee board, was named, proper authorities could then determine at that time whether lease of valuable state property at a nominal sum for erection of structure, named for a living person, was a use of public funds prohibited by statute; injunction would not be issued to prevent violation of statute prohibiting naming public buildings for living persons. LSA-R.S. 14:316.

10. Appeal and Error — 1177(9)

Where issue as to whether parish levee board had previously dedicated land in question as a park to city, thereby removing board's, and city's, authority to change status of property by leasing it to foundation, was not developed sufficiently for the Supreme Court to rule on it on appeal, case would be remanded to district court for a determination of that question.

John W. Haygood, Jones, Walker, Waechter, Poitevent, Carrere & Denegre, Metairie, for F. Ed. Hebert Foundation, defendant-respondent in No. 62453 and defendant applicant in No. 62385.

Richard J. McGinity, McGinity & McGinity, New Orleans, for Bd. of Levee Com'rs, etc. defendants-applicants in No. 62453 and defendants-respondents in No. 62385.

John F. Robbert, Garon, Brener & McNeely, New Orleans, for plaintiffs-respondents in Nos. 62385 and 62453.

1. Plaintiffs' petition alleged violation of the Public Lease Law, R.S. 41:1211 et seq.; R.S. 14:316, which prohibits naming public buildings for living persons; and Art. 5, § 14(18) of the Comprehensive Zoning Ordinance of 1970 of the City of New Orleans.

2. The Court of Appeal noted that the plaintiffs had apparently abandoned the argument that the lease violated certain city ordinances. 327

DIXON, Justice.

Plaintiffs Henry Arnold and John F. Robbert, residents and taxpayers in Orleans Parish, filed a taxpayer's suit seeking declaratory and injunctive relief against the Orleans Levee Board and the F. Edward Hebert Foundation. The plaintiffs contended that a lease contracted between the Board and the Foundation, in which the Foundation was to lease at a nominal sum certain lakefront property belonging to the Board for the construction of a museum and a library named for Congressman Hebert, was in derogation of statutory prohibitions and municipal ordinances of the City of New Orleans.¹ The district court initially sustained the defendants' exception of no cause of action, but the Court of Appeal reversed the trial court on the ground that the Board was required to comply with the Public Lease Law, R.S. 41:1211 et seq., and remanded for further proceedings. 327 So.2d 495 (4th Cir. 1976).² Application was made to this court for review, but was denied because the judgment was not final. 330 So.2d 818 (La.1976).

On remand the district court heard the case on the merits pursuant to a written stipulation of facts in which the defendants admitted that the contract did not comply with the Public Lease Law. Following the reasoning of the appellate court, the court thereafter declared the lease null and void and issued a permanent injunction against the defendants. The Court of Appeal affirmed the district court judgment on the basis of its first opinion in the matter, which it held to be the law of the case. 359 So.2d 748 (4th Cir. 1978). Defendants applied separately for writs to this court. Writs were granted and the cases consolidated to review the decisions of the lower courts. 360 So.2d 1350 (La.1978).

So.2d 495, 501. The court also noted that the plaintiffs in brief argued that the "consideration" was insufficient to support the lease and that the land in question had previously been dedicated to the City as a park, although no such allegations were contained in the petition. The plaintiffs were allowed to amend and supplement the petition to advance the last two arguments.

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366 SOUTHERN REPORTER, 2d SERIES

Applicability of the Public Lease Law

[1-3] An essential determination is the relationship of the Public Lease Law, R.S. 41:1211 et seq.,³ to the operations of the Orleans Levee Board in specified parts of Orleans Parish. Article 16, § 7(h) of the

Louisiana Constitution of 1921 vested in the Orleans Levee Board all rights formerly held by the state to the bed and shores of Lake Pontchartrain within designated territorial limits which encompass the site in question.⁴ To ensure the orderly develop-

3. "§ 1211. Lessor defined

For the purposes of this Part, the term 'lessor' shall refer to and include the Register of the State Land Office, the commissioner of conservation, and any and all other branches, departments or agencies of the state, or any school district, levee district, drainage district, municipal or parochial subdivision of this state, or any penal or charitable institution, or state university or college, or other unit or institution, deriving its authority and powers from the sovereignty of the state."

"§ 1212. Lands which may be leased; purposes; lease of sixteenth section lands for agricultural purposes; negotiation of surface leases of school lands

A. Any lessor may, through its governing authority, lease for trapping, grazing, hunting, agricultural and any other legitimate purposes whatsoever, other than for oil, gas or other mineral purposes and development, any lands of which the lessor has title, custody or possession, and the lessor may, at its option, lease the land on a share basis in accordance with such terms and conditions as the governing authority deems to be to the best interest of the lessor.

"§ 1213. Application for lease

Any person desiring to lease any land in accordance with the provisions of this Part shall present to the lessor a written application, together with a cash deposit of thirty-five dollars which shall be returned to the applicant if he makes an unsuccessful bid. The application shall set forth the name and address of the applicant, a reasonably definite description of the location and amount of land which the applicant desires to lease and the purposes for which the lands are to be leased. The applicant shall ask that the application be registered and that the land described therein be leased to him under the provisions of this Part. The lessor shall register the application and shall order an inquiry to determine whether the lands applied for are leasable for such purposes."

"§ 1214. Advertisement and bids

If the lessor determines that the lands in question may be leased, the lessor shall publish an advertisement in the official journal of the parish where the land is located setting forth a description of the land to be leased, the time when bids therefor will be received, and a short summary of the terms and conditions and purposes of the lease to be executed; provided that if the lands are situated in two or more parishes the advertisement shall appear in the official journals of all parishes in which the lands are located. The advertisement shall be

published for a period not less than fifteen days and at least once a week during three consecutive weeks. The lessor may also send notices to those whom it may think would be interested in submitting bids for the leases.

The lessor may on its own initiative advertise for bids for any lease as provided herein, but without application therefor. The applications and bids provided for in this part shall be secret, sealed applications and bids and shall be forwarded through the United States mail to the lessor at its domiciled address.

The advertisements in accordance with this section shall constitute judicial advertisements and legal notices within the contemplation of Chapter 5 of Title 43 of the Louisiana Revised Statutes of 1950."

"§ 1215. Opening of bids; execution of leases; exceptions, public benefit corporations

A. At the date and hour mentioned in the advertisement for the consideration of bids, the bids shall be publicly opened by the lessor at its office. The lessor shall accept only the highest bid submitted to it by a person or persons who meet all of the conditions of this Part, except in the case where the lessor is a public benefit corporation as authorized and defined in Subsection B hereof. The lessor shall have the right to reject all bids. The lessor may execute any lease granted under such terms and conditions as it deems proper, or as otherwise provided in this Part. All leases signed by the lessor shall be executed in triplicate and shall be disposed of as follows: one copy shall be furnished to the lessee; one copy shall be recorded in the conveyance records of the parish or parishes in which the land lies, and one copy shall be retained in the records of the lessor.

"§ 1217. Term and rental; port authorities excepted

A. All leases executed under the provisions of this Part shall be for a period not exceeding ten years and shall provide for consideration to be paid as a cash rental of not less than one dollar per acre, which shall be payable in cash annually and in advance, or if the land is leased for the agricultural purpose of planting, growing, cultivating and harvesting any agricultural crop the consideration shall be so paid in cash or on a share basis at the option of the lessor;

4. Roughly speaking the territory extends from the Jefferson Parish line to approximately one-quarter mile past Paris Road. It is bounded on the south by the right-of-way line of Haynes Boulevard east of the airport and by Robert E. Lee Boulevard west of the airport.

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ment of the lakefront, the Board was granted broad powers for developing the area:

"To enable the said Board to perform the work herein provided for and to assist in defraying the cost and expenses thereof, and to carry out the purposes of existing laws and this Article of the Constitution, the State of Louisiana hereby grants and releases to said Board the title of the State in and to all public property necessary for the purposes hereof and all lands reclaimed or filled in within any levee embankments, slopes, retaining walls, sea walls, and breakwaters constructed hereunder and in and to all lands lying within the territorial limits of said project and hereby releases said land from any public trust or dedication and said Board shall have jurisdiction, power and authority to sell and lease, or otherwise dispose of such portion of the lands reclaimed and other property acquired for the purpose of said improvement, except the lands herein required to be dedicated by it for public use, together with any building, improvements or other works constructed thereon, under such terms and conditions and by such methods as said Board may deem proper . . . " Art. 16, § 7(h), 1921 La.Const.

This provision was not included in the 1974 Constitution but was continued as a statute ". . . restricted to the same effect as on the effective date of this constitution," by Article 14, § 16(A)(12). It was subsequently re-enacted by Act 729 of 1975 as R.S. 38:1235.2 with some minor stylistic changes.⁵

It is the contention of the defendants that this provision exempts the Board from compliance with the Public Lease Law because the Board is granted discretion to dispose of the lakefront properties as it sees fit; that discretion might or might not ac-

5. The Court of Appeal stated that from the position it reached, this change was academic since it held that the constitutional provisions had not served as an exemption to the requirements of R.S. 41:1211 et seq. The district court, on the other hand, when it considered the case on remand, seemed to place emphasis on the change in status from constitutional provision to statute, as indicated in the written

cord with the Public Lease Law. In effect, the defendants take the position that R.S. 38:1235.2 is a special statute, the provisions of which prevail in case of any conflict with a statute of general applicability. *Abbott v. Parker*, 259 La. 279, 249 So.2d 908 (1971); *Arata v. The Louisiana Stadium and Exposition District*, 254 La. 579, 225 So.2d 362 (1969).

On the other hand, the plaintiffs are of the view that the provisions cited above have no such effect because no conflict exists between the special grant of authority to the Board and the general provisions of R.S. 41:1211 et seq. which are expressly made applicable to levee districts. They argue that the term "methods" in R.S. 38:1235.2 merely refers to the ways of disposing of the property mentioned earlier in the same sentence and has no bearing on the manner in which a specific agreement is contracted. Therefore, conclude the plaintiffs, the public policy of the state, which clearly favors competitive bidding for the lease of state property, and the legislative intent as embodied in the later enactment, the Public Lease Law, require that the differing provisions be reconciled in favor of public bidding, and that the lease in question be declared invalid.

In reaching a similar conclusion when the case was first before it, the Court of Appeal relied on the reasoning of *Hall v. Roosteet*, 247 La. 45, 169 So.2d 908 (1964), in which this court held that the Uniform Airport Law, R.S. 2:131 et seq. did not exempt the lease of a public airfield by the Calcasieu Parish Police Jury from the Public Lease Law. There the police jury contended that the special law exempted it from compliance with R.S. 41:1211 et seq. because no specific mention was made of public bidding and because the special law permitted long-

reasons for judgment issued by the court. Our disposition of this issue does not consider any possible effect of the change, although the minutes of the Constitutional Convention indicate that no change was intended by continuing the provision as a statute. See Verbatim Transcripts of the 1973 Constitutional Convention, Vol. 39, Day 121, pp. 99-105.

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er leases than those allowed by the Public Lease Law. In rejecting this argument, we held the Public Lease Law applicable to leases of state property "in the absence of an express permissive provision in the special law that such leases could be negotiated without advertisement and competitive bidding." 247 La. 45, 60, 169 So.2d 908, 908.

Although we agree that *Hall v. Rosteet*, supra, recites the rule of law applicable to the facts before us, we believe that the Court of Appeal was in error not to view the provisions of R.S. 38:1235.2 as establishing an exemption from the Public Lease Law. In reaching this conclusion, we take note of several decisions in which appellate courts have found an exemption from the Public Lease Law on the basis of statutory language no more express than that in the instant case.

In *Kliebert v. South Louisiana Port Commission*, 182 So.2d 814 (4th Cir. 1966), writ refused, 248 La. 1030, 188 So.2d 652 (1966) the Court of Appeal for the Fourth Circuit construed the constitutional provisions empowering the port commission to construct and acquire structures to include "the implied authority to negotiate contracts consistent with its purpose." 182 So.2d 814, 818.* The Court of Appeal for the Third Circuit followed the reasoning of *Kliebert v. South Louisiana Port Commission*, supra, in *Wright v. Lake Charles Harbor and Terminal District*, 188 So.2d 449 (3d Cir. 1966), writ refused, 249 La. 620, 188 So.2d 922 (1966). There the court held that the district could enter into a contract of lease without complying with the procedures of R.S. 41:1211 et seq., apparently on the basis of the district's authorization " . . . to

lease or sublease for processing, manufacturing, commercial and business purposes, lands or buildings owned, acquired or leased as lessee by it . . ." Art. 14, § 31, La.Const.1921. A similar result was reached in *Hebert v. Police Jury of West Baton Rouge Parish*, 200 So.2d 877 (1st Cir. 1987), writ refused, 250 La. 1032, 201 So.2d 520 (1967), wherein the court determined that a lease entered into pursuant to the "Industrial Inducement Law" (R.S. 39:991-1001 and Art. 14, § 14 (b.3) of the 1921 Constitution) was valid despite the police jury's failure to adhere to the requirements of the Public Lease Law.⁷

From this review of the jurisprudence, it appears to us that the broad grant of authority to the Levee Board in disposing of property reclaimed from the lake bottom operates as an exemption to the general law requiring public bids before state lands can be leased. The phrase "under such terms and conditions and by such methods as said Board may deem proper . . ." indicates a plenary grant of authority to the Board to dispose of the property within the lakefront area in any manner which it deems appropriate under the circumstances, which includes a negotiated lease. To hold otherwise is to engraft onto the special powers granted the Board a proviso that they be exercised in accordance with the provisions of any general statute dealing with related subject matter which the legislature might subsequently pass. Such a construction is warranted neither by the language in question nor the history of the development of the New Orleans lakefront.

We therefore conclude that the Court of Appeal committed error in holding the lease

6. In its original hearing, the Court of Appeal distinguished *Kliebert* because there the lease was regarded as one essential to the operation of the authorities of the port commission, whereas the lease between the Board and Foundation was viewed as having no relation to the Board's primary function. We cannot agree that granting a lease for the construction of a public museum and library is foreign to the Board's authority to develop the lakefront.

7. Although the opinion does not specify which provisions of the "Industrial Inducement Law"

served as the exemption, R.S. 39-896 provided in pertinent part:

"Such lease shall be made [under] such other terms and conditions and for the time which may be determined by the municipality and may contain provisions authorizing the purchase of the entire leased project or any portion thereof by the lessee or its assignee after all bonds issued thereunder have been paid in full, for such consideration and [under] such terms and conditions as the municipality may determine. . . ." (This statute has subsequently been slightly amended).

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in question invalid for failing to comply with the requirements of the Public Lease Law.

*Other Arguments Advanced by
the Plaintiffs*

[4, 5] The plaintiffs have also argued that the lease is invalid because its execution does not assist in defraying the expenses of the Levee Board's reclamation projects, a derogation from the requirements of R.S. 38:1235.2. In addition, the plaintiffs contend that the annual payments of \$1.00 per acre are insufficient to support a contract of lease, and that in effect the Board is donating or lending the land to the Foundation in violation of Art. 7, § 14(A) of the 1974 Constitution.

A reading of the statute belies the plaintiffs' first contention. The phrase "to assist in defraying the cost and expenses thereof" refers to the state's grant to the Board of its title in the lakefront property and is obviously a corollary to the statute's first phrase, "[t]o enable the board to perform the work herein provided for." The language in question is clearly not a condition placed on the Board's activities in disposing of the reclaimed land. Although the plaintiffs refer to the case of *Welsh v. Board of Levee Commissioners of Orleans Levee District*, 168 La. 1037, 123 So. 705 (1929), as support for their position, that decision dealt with constitutional restrictions on the sequence of reclamation projects, and is not relevant to the issues at hand.

[6, 7] The second argument advanced by the plaintiffs also lacks merit. Although it is true that the price for a lease must be serious and not out of proportion to the thing's value (C.C. 2464; *Murray v. Barnhart*, 117 La. 1023, 42 So. 489 (1906)), we think that the obligations imposed on the Foundation by the lease constitute serious consideration. Besides the nominal annual payment, the Foundation must construct a building at a minimum cost of \$300,000, the design and structure of which are subject to the Board's approval. The building will eventually become the Board's property with no compensation due to the Founda-

tion. The Foundation is also obligated to maintain the improvements during the lease term and to pay insurance premiums on any policies covering the improvements. Certainly the obligations assumed by the lessee are as great as those in *City of New Orleans v. Disabled American Veterans*, 223 La. 363, 65 So.2d 796 (1953), wherein this court refused to invalidate a lease upon similar arguments.

[8, 9] The plaintiffs have further alleged that the contract between the defendants violates R.S. 14:316, which forbids the naming of public buildings for living persons. The plaintiffs contend that the agreement in question amounts to a joint venture, whereby the Board donating the land and the Foundation constructing the building which will, at the agreement's termination, be maintained with public funds.

R.S. 14:316 provides:

"No public building, public bridge, public park, public fish or game preserve, or public wild life refuge built, constructed, and maintained in whole or in part with public funds and title to which stands in the name of the state or any of its subdivisions or in the name of any institution receiving its support in whole or in part from the state shall be named in honor of any living person.

The officer, officers, board, or commissioner in charge of a public building, public park, public fish or game preserve, or public wild life refuge named in honor of any person who is still living shall change the name and destroy, deface, or remove all plaques, signs, or other evidence of the old name appearing on the building, bridge, park, preserve, or refuge.

Whoever violates this Section or fails to perform the duties imposed by this Section shall be fined not less than one hundred dollars nor more than two hundred dollars and, in default of fine, imprisoned for not less than thirty days nor more than sixty days."

It is well settled that "[a]n injunction should not be issued to prevent the commission of a crime, if the only reason for pre-

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venting it is that it is a crime." *City of New Orleans v. Liberty Shop*, 157 La. 28, 28-29, 101 So. 798, 799 (1924). See also, *Pick's Auto Parts No. 2, Inc. v. Hodge's Auto Parts*, 334 So.2d 547 (4th Cir. 1976); *Simon v. Southwest Louisiana Electric Membership Corp.*, 267 So.2d 757 (3d Cir. 1972), writ refused, 263 La. 625, 268 So.2d 680 (1972). Here the plaintiffs have advanced no reason why enforcement of the statute by criminal prosecution is not adequate in case of a violation. When the building is named, the proper authorities may then determine whether the lease of valuable state property at a nominal sum for the erection of the structure, named for a living person, is a use of public funds prohibited by the statute.

[10] A final objection to the lease is that the Board had previously dedicated the land in question as a park to the City of New Orleans by Ordinance 2156 M.C.S., approved by the City Council on April 6, 1961. The plaintiffs contend that the dedication removed the Board's, and indeed the City's, authority to change the status of the property by leasing it to the foundation. However, the record does not reveal any response to this argument other than a general statement that not all the reclaimed land had to be dedicated for public use under the provisions of Art. 16, § 7(h) and its present embodiment, R.S. 38:1235.2. Because this issue has not been developed sufficiently for us to rule, the case is remanded to the district court for a determination of this question.

Accordingly, the judgment of the Court of Appeal is reversed and the case is remanded to the district court for proceedings, including responsibility for costs, not inconsistent with the views expressed herein.



STATE of Louisiana

v.

Adrian WILSON.

No. 62398.

Supreme Court of Louisiana.

Dec. 15, 1978.

Defendant was convicted before the Eighteenth Judicial District Court, Parish of Iberville, Ian W. Claiborne, J., of possession of marijuana with intent to distribute, and he appealed. The Supreme Court, Tate, J., held that officers, who were told by confidential informant that he gained information "from talking to [undisclosed] people inside the barroom" that a load was coming in and was headed towards certain lounge and that defendant should be in automobile of a certain year, color and make and who observed defendant's car matching such description traveling toward the lounge, did not have reasonable cause to make investigatory stop of car.

Reversed and remanded.

Sanders, C. J., and Summers and Marcus, JJ., dissented.

1. Criminal Law — 394.4(9)

Evidence seized or otherwise obtained as result of unconstitutional investigatory stop cannot constitutionally be admitted into evidence against a criminally accused. LSA-Cr.P. art. 215.1, subd. A; LSA-Const. art. 1, § 5; U.S.C.A. Const. Amend. 4.

2. Arrest — 63.4(7)

Searches and Seizures — 3.3(1)

Officers may not arrest or search an individual on basis of hearsay information unless the hearsay contains underlying circumstances and details sufficient to provide substantial factual basis to conclude both that informant is credible and that the information so furnished was obtained under circumstances or from sources factually indicating its veracity. LSA-Cr.P. arts. 215.1, 215.1, subd. A; LSA-Const. art. 1, § 5; U.S.C.A. Const. Amend. 4.